IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL REVIEW APPLICATION NO. 26 OF 2006

(STAMP NUMBER 1841 OF 2006)
IN
SECOND APPEAL NO. 14 OF 2000

Shri Gajanan Rama Parab
Gaonkar, son of Rama Parab
Gaonkar, major, married,
resident of Gaonkarwada,
Village Piligao, Bicholim Taluka,
Goa. ... Applicant

versus

Shri Mohamed Ibrahim Khan,
son of Yakub Khan,
married,major in age,
President of Jamatul Muslamin
of Piligao, constitution of Muslim,
community of Piligao,for self
as also on behalf of all other
members of the Association of
the Muslim Community of Piligao,
named and styled as Jamatul
Muslamin of Piligao. ... Respondent

Mr. S. D. Lotlikar, Senior Advocate with Mr. M. D'Souza, Advocate for the Applicant.

Mr. V. K. Bodke, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE : 9TH MARCH, 2007.

ORAL ORDER

Heard Mr. S. D. Lotlikar, the learned Senior Counsel on behalf of the applicant(Original Defendant) and Mr. V. K. Bodke, the learned Counsel on behalf of the respondent(Original Plaintiff).

2. This review application is filed by the original defendant to review the Judgment of this Court dated 10-3-2006 in Second Appeal No.14 of 2000.

3. The first submission made on behalf of the defendant is that this Court proceeded on a wrong assumption that the defendant had admitted that the suit stalls are situated in sub-division 11 of survey no.213. In this context, reliance is placed by the learned Senior Counsel on **C. Rangaiah and others** v. **Assistant Commissioner Titpur, Tumkur and others** (1997 A I H C 4136) wherein it is observed that it is well settled principle of law that if a finding has been arrived at as a result of misapprehension of true state of facts, or erroneous assumption of fact resulting from ignoring of material pleadings or the material pleadings or material facts having escaped to be noticed by the Court, then that may be a case for interference, as the decision may be said to be the result of error or law apparent.

4. I am not inclined to accept the said submission. It may be that the word “admittedly” in para 5 of the Judgment was used inadvertently but it is to be noted that the defendant did not ever dispute that the suit stall/gadda was not located in S. No.213/11. It was the case of the plaintiff that the suit stall/gadda was situated in the suit property which was surveyed under no.213/11 and 12 in para 3 of the plaint. On behalf of the plaintiff, the said structure was identified on the survey plan produced, by letter M and that was very much within survey no.213/11 and in that context, it was observed by this Court that the suit stall/gadda was situated in sub-division 11 of survey no.213 i.e. the property in possession of the plaintiff and that it is only in the course of evidence that the defendant had come up with a plea that the suit stall/gadda was situated in public property. It was also observed that it was well settled proposition of law that no amount of proof in support of a plea not taken, could be looked into. As per the plaintiff, the said structure was allowed to be erected on a strip of land between the edge of the public road and the compound wall constructed by them. It was not the case of the defendant that the said structure did not fall in the suit property claimed by the plaintiff bearing survey nos.213/11 and 12 or it fell in public or Government property. In my view, there is no scope to review the Judgment on that count.

5. The learned Senior Counsel next contends that the Second Appeal has been decided without framing a substantial question of law and in this context has placed reliance on the decisions in the case of **The Selection Committee for Admission to the Medical and Dental College, Bangalore** v. **M. P. Nagaraj**(AIR 1972 Mysore 44) and **Mahadeva and others** v. **Tanabai**(AIR 2004 SCC 3854).

6. In the first case, a Division Bench of Mysore High Court has stated that where there is a decision of the Supreme Court bearing on a point and where a Court has taken a view on that point, which is not consistent with the law laid down by the Supreme Court, it needs no elaborate argument to point to the error and there could reasonably be no two opinions entertained about such error. Such error would clearly be an error apparent on the face of the record. In the second decision, the Apex Court observed thus:-

> "The Judgment of the High Court is based on a question framed during the course of writing of the Judgment which is in departure from the two questions of law on which the appeal was admitted for hearing. The whole emphasis shifted from the core issues. Then, the High Court has not discussed any law and has also not assigned reason, much less a satisfactory one, for taking a view different from the one concurrently taken by the two Courts below".

7. This contention also needs to be rejected. In my view, the aforesaid decision is inapplicable to the facts of the case at hand. The Second Appeal was admitted on 23-6-2000 on two substantial questions of law framed by this Court and which have been answered by Judgment dated 10-3-2006. No plea was taken at the time of hearing of the Second Appeal that the said two substantial questions of law framed earlier did not arise in the appeal and the appeal has been decided within the said substantial questions of law earlier framed.

8. Thirdly, the learned Senior Counsel submits that initially the suit was filed by Jamatul Muslamin of Piligao represented by its President Shri Mohamed Ibrahim Khan and thereafter although the plaintiff sought to file the suit in a representative capacity on behalf of the Muslim Community of Piligao there has been no actual change of the plaintiff.

9. On the other hand, the learned Counsel Mr. V. K. Bodke submits that the plaint was amended subsequently and the suit converted into a suit filed in a representative capacity on behalf of all other members of the Association of the Muslim Community of Piligao. As per Mr. Bodke, Jamat means Community and the suit was filed by Shri M**o**hamed Ibrahim Khan who was the President of the Association of the Muslim Community. Mr. Bodke has further submitted that this Court after considering all the aspects of the matter has decided the second appeal and the present attempt is nothing but a hearing on another appeal. Mr. Bodke has placed reliance on a decision of the Apex Court reported in **Haridas Das** v. **Usha Rani Banik(Smt) and others**((2006) 4 SCC 78) wherein the Apex Court has stated that:-

> In order to appreciate the scope of a review, Section 114 C.P.C. has to be read, but this Section does not even adumbrate the ambit of interference expected of the Court since it merely states that it “may make such order thereon as it thinks fit”. The parameters are prescribed in Order 47 CPC and for the purposes of this lis, permit the defendant to press for a rehearing “on account of some mistake or error

apparent on the face of the records or for any other sufficient reason". The former part of the rule deals with a situation attributable to the applicant, and the latter to a jural action which is manifestly incorrect or on which two conclusions are not possible. Neither of them postulate a rehearing of the dispute because a party had not highlighted all the aspects of the case or could perhaps have argued them more forcefully and/or cited binding precedents to the Court and thereby enjoyed a favourable verdict. This is amply evident from the Explanation to Rule 1 of Order 47 which states that the fact that the decision on a question of law on which the Judgment of the Court is based has been reversed or modified by the subsequent decision of a superior Court in any other case, shall not be a ground for the review of such Judgment. Where the Order in question is appealable the aggrieved party has adequate and efficacious remedy and the Court should exercise the power to review its order with the greatest circumspection. This Court in **Thungabhadra Industries Limited** v. **Government of A.P.** AIR 1964 SC 1372 held as follows:- (SCR page 186) "There is a distinction which is real, though it might not always be capable of exposition, between a mere erroneous decision and a decision which could be characterized as vitiated by "error apparent". A review is by no means an appeal in disguise whereby an erroneous decision is reheard and corrected, but lies only for patent error ... where without any elaborate argument one could point to the error and say here is a substantial point of law which stares one in the face, and there could reasonably be no two opinions entertained about it, a

> clear case of error apparent on the face of the record would be made out".

10. The Apex Court also referred to **Meera Bhanja** v. **Nirmala Kumari Choudhury(**(1995) 1 SCC 170 wherein in paras 14 and 15 of the Judgment observed thus:-

> "... A perusal of O 47 Rule 1 shows that review of a judgment or an order could be sought: (a) from the discovery of new and important matters or evidence which after the exercise of due diligence was not within the knowledge of the applicant; (b) such important matter or evidence could not be produced by the applicant at the time when the decree was passed or order made; and (c) on account of some mistake or error apparent on the face of the record or any sufficient reason ".

11. The conversion of the name of the plaintiff has been exhaustedly dealt with whilst answering second substantial question framed by this Court by Judgment dated 10-3-2006 from paras 9 onwards and therefore I need not enter into the said controversy again.

12. This review petition is nothing but an appeal in disguise by which the Judgment of this Court dated 10-3-2006 in Second Appeal No.14 of 2000 is sought to be corrected after a rehearing. That cannot be allowed in review jurisdiction.

13. I find there is no merit in this review application and hence the same is hereby dismissed, with costs to the plaintiff.

N. A. BRITTO, J.

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